



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

NOV 1 2006

William P. Miller, Esquire  
Roberson, Haworth & Reese P. L. L. C.  
High Point Bank & Trust Building  
300 North Main Street, Suite 300  
P.O. Box 1550  
High Point, NC 27261

RE: MUR 5681  
High Point Regional Association of Realtors

Dear Mr. Miller:

On, September 29, 2005, the Federal Election Commission (the "Commission") notified your client, High Point Regional Association of Realtors, Inc., of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

After reviewing the allegations contained in the complaint, your client's response, and publicly available information, the Commission on October 18, 2006, found reason to believe that your client violated 2 U.S.C. § 441b(b)(3), a provision of the Act, and 11 C.F.R. § 114.5(a). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

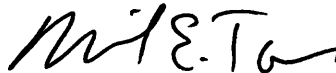
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If your client is interested in engaging in pre-probable cause conciliation, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 2 U.S.C. § 437(g)(a), 11 C.F.R. Part 111 (Subpart A). Similarly, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

Sincerely,



Michael E. Toner  
Chairman

Enclosures  
Factual and Legal Analysis  
Conciliation Agreement

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

**RESPONDENT:** High Point Regional Association of Realtors      **MUR:** 5681

### I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission. *See* 2 U.S.C. § 437g(a)(1). Complainant, Michael D. Pugh, a member of the High Point Regional Association of Realtors ("HPRAR"), alleged that HPRAR used "intimidation, coercion and retaliation" to force members to make contributions to the National Association of Realtors Political Action Committee. Specifically, complainant stated that HPRAR publicized the names of its members who did not make contributions in the association's monthly newsletter and at association meetings.

### II. FACTUAL AND LEGAL ANALYSIS

#### A. Background

HPRAR is a local association of realtors affiliated with the National Association of Realtors ("NAR"). As a local affiliate of NAR, HPRAR regularly solicits its members for contributions to NAR's separate segregated fund, the National Association of Realtors Political Action Committee ("RPAC").<sup>1</sup> According to the complaint and amended complaint, on multiple occasions in 2005, HPRAR publicized the names of individual members who had not contributed to RPAC, in an effort to solicit additional contributions.

Specifically, the complaint stated that in August 2005, HPRAR listed the name of each individual realtor member who had "not yet" contributed to RPAC on two pages of its eight-page

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<sup>1</sup> *See* 2 U.S.C. § 114.8(g); AO 1995-17 (NAR and its affiliated state and local Realtor associations may solicit contributions to RPAC from members of such state and local "Member Boards" (Realtor associations)).

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monthly newsletter. The names of the non-contributing individuals were listed under the name of their company, and the percentage of contributing members from each company appeared next to the company's name. Companies that had a 100% contribution rate from its individual members were listed at the very top of the two-page list under the heading "2005 100% RPAC Companies." No individual names of members who had already made contributions to RPAC were listed anywhere in the two-page spread. At the bottom of the second page there is a logo of RPAC with the question: "Have you made your contribution?" (Emphasis in original.)

The newsletter also contained an article summarizing new state legislation "that makes significant improvements to the State's real estate licensing law." The end of the article stated: "These bills are representative of your RPAC dollars at work to improve our industry standards and working environment as well as to further protect our customers and clients, the real estate consumer. Have you given your RPAC fair share? The article then gave a "special RPAC thanks" to an individual realtor member for her generous monetary support of RPAC.

According to complainant, HPRAR also regularly displayed the names of non-contributing members on an overhead projection screen at the association's monthly meetings and at the association's 2005 Annual Meeting, held on September 21, 2005, where checks were being presented to local candidates. In response to the amended complaint, HPRAR confirmed that the "exact same information" that was contained in the newsletter was provided on an overhead projection at a monthly meeting and at the 2005 Annual Election Meeting.<sup>2</sup>

Respondent did not dispute the material facts, and acknowledged that the Act prohibits the solicitation of contributions by coercive methods. However, Respondent argued that the

<sup>2</sup> The amended complaint stated that it was a "common practice" to display the names at monthly meetings, but the complaint did not indicate how long the practice has been in effect. Respondents' acknowledgement stated that the information was displayed at "the monthly meeting" inferring that it was only done on one occasion.

disclosure of names of non-contributing members in a newsletter distributed only to members and at members-only meetings is not coercive and, therefore, does not violate the Act.

Respondent asserted that, because members have "no right to or expectation of anonymity ... publication of the identity of non-contributing solicitable [sic] persons is not a violation of the Act or Regulations." In support of its argument, Respondent relied on 11 C.F.R. §§ 114.7(e) and (f), which provide that there is no limitation on the number of times a membership organization may solicit its members or on the method of solicitation of voluntary contributions from its members.

B. Analysis

It is unlawful for a solicitation for contributions, whether written or oral, to fail to inform the employee or member being solicited at the time of the solicitation of the political purposes of the separate segregated fund and of his or her right to refuse to so contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4). *See also* AO 1998-19 (finding that a solicitation that did not include a statement that the member has a right to refuse to contribute without any reprisal to be deficient even where the solicitation already states that contributions are voluntary) and AO 1988-3 (requiring separate segregated funds to adhere to 11 C.F.R. § 114.5 to ensure contributions are voluntary).

The solicitations in this matter lacked proper notice of the political purposes of RPAC and the member's right to refuse to contribute without reprisal, as required by 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a). Specifically, the newsletter solicited contributions to RPAC by listing the names of non-contributing members and asking, "Have you made your contribution?" (Emphasis in original.) In addition, in a separate section of the newsletter, HPRAR made another solicitation for contributions to RPAC when it described newly passed

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legislation that it viewed as advantageous to the real estate industry, explained that RPAC dollars make such legislation possible, and asked, "Have you given your RPAC fair share?" These solicitations were directed to HPRAR members, but neither portion contained a notice informing the association members of the political purposes of RPAC or that the member has a right to refuse without reprisal, as required by the Act.

Therefore, there is reason to believe that High Point Regional Association of Realtors violated 2 U.S.C. § 441b(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(3)-(4).

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